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Quieting Equitable Title-Boundaries

QUIETING EQUITABLE TITLE—BOUNDARIES.—A mother owned a lot on which was situated two houses. After the marriage of plaintiff to her son, she promised to give them one of the houses, described as "the little house on the alley," if they would improve the property, pay the taxes,. and make it their home. No deed for the property was ever made. Plaintiff and her husband lived thereon for ten years, made permanent improvements, and paid taxes on the lot. Subsequent to the death of the plaintiff's husband, the mother deeded the entire lot to two other sons, who knew of plaintiff's interests in the property. Plaintiff brought an action to quiet her equitable title to that part of the lot on which the house was situated. Held, for the plaintiff. *Sweeney v. Sweeney* (Ind. App., 1940), 25 N. E. (2d) 273.[1]

The case presents the problem as to the rights of one having a purely equitable title to real estate to have such title quieted as against an outstanding legal title. The plaintiff derives her equitable claim of title from a parol promise of a gift of real estate. The authorities are agreed that, under such facts, where possession is taken and valuable and permanent improvements are made on the land by the promissee in reliance on the promise there is sufficient change of position to give rise to an estoppel on the part of the promissor, and make the promise enforceable.[2] The same facts have uniformly been held to constitute sufficient part performance under an oral contract to convey land to take the case out of the Statute of Frauds.[3]

Thus it is seen that as against the grantor there is a specificially enforceable promise to convey land. And it has been held that such part performance in reliance upon a promise to convey as will establish a right to specific per-

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others to join its ranks. Therefore, the fact that lawful activities for that purpose are being conducted by a union against an employer none of whose employees is a present member of the union should not be a controlling factor in holding such activities unlawful.

[1] The mother, grantor, and her two sons, grantees of the legal title, were joined in the suit as parties defendant. The mother disclaimed, and the grantees defended.

[2] POMEROY, SPECIFIC PERFORMANCE OF CONTRACTS (3 ed., 1926), secs. 130, 131; Horner v. McConnell (1901), 158 Ind. 280, 63 N. E. 472; Ault v. Miller (1932), 203 Ind. 487, 181 N. E. 35; Starkey v. Starkey (1893), 136 Ind. 349, 36 N. E. 287; Burns v. Fox (1887), 113 Ind. 205, 14 N. E. 541; Horner v. Clark (1901), 27 Ind. App. 6, 60 N. E. 732; Bevington v. Bevington (1907), 133 Iowa 351, 110 N. W. 840, 9 L. R. A. (N. S.) 508. *Cf.* Froman v. Froman (1859), 13 Ind. 317.

[3] Horner v. McConnell (1901), 158 Ind. 280, 63 N. E. 472; Starkey v. Starkey (1893), 136 Ind. 349, 36 N. E. 287; Burns v. Fox (1887), 113 Ind. 205, 14 N. E. 541; Cutsinger v. Ballard (1888), 115 Ind. 93, 17 N. E. 206; Osterhaus v. Creviston (1916), 62 Ind. App. 382, 111 N. E. 634.

formance also gives rise to an equitable title in the promisee.[4] Quiet title proceedings have been held proper in such situations.[5]

It is clear in the principal case that the defendant grantees are in no better position than their grantor, having taken the legal title with full knowledge of all the facts giving rise to equities in favor of the plaintiff.[6]

There remains the objection of indefiniteness in the promise, such that the property, subject of the gift, was not definitely described, and thus unascertainable. The oral promise was to make a gift of a part of a larger lot, "the little house on the alley"; and there never was any division of the lot as between the two houses situated thereon. The defendants contended that because of indefiniteness in the promise it was impossible to determine just how much of the lot should accompany the house in the gift, and that the promise was thus unenforceable.

It has been held repeatedly that in the case of a deed or a contract to convey land, the instrument or agreeemnt is void if the premises cannot be definitely identified from the description contained therein.[7] But it may be observed that the classical situation in which this objection of indefiniteness arises is in the attempt to enforce or reform a written instrument. In such cases the parol evidence rule makes it impossible to clarify the indefinite promise, and it is unenforceable because the thing to be done cannot be made certain.[8] But the obstacle offered by this rule is not present in the principal case, where an oral promise to convey land has become enforceable by reason of part performance.

It has been said that where a promise is unenforceable for uncertainty, performance of the consideration therefor by the other party does not make it enforceable, but may give rise to quasi contractual obligation to pay the fair value of what has been received.[9] However, in a case like the one

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[4] Horner v. Clark (1901), 27 Ind. App. 6, 60 N. E. 732; Osterhaus v. Creviston (1916), 62 Ind. App. 382, 111 N. E. 634; Cutsinger v. Ballard (1888), 115 Ind. 93, 17 N. E. 206. *Cf.* Johnson v. Pontius (1888), 118 Ind. 270, 20 N. E. 792.

[5] Stanley v. Halliday (1891), 130 Ind. 464, 30 N. E. 634; Puterbaugh v. Puterbaugh (1891), 131 Ind. 288, 30 N. E. 519. *Cf.* Grissom v. Moore (1885), 106 Ind. 296, 6 N. E. 629. Problems of pleading in suits to quiet equitable title have arisen so frequently as to be conspicuous. In general, it is apparent that a party must be careful to allege only an equitable title, and not legal title, if he hopes to recover on proof of facts giving him equitable title. See Coppock v. Austin (1904), 34 Ind. App. 319, 72 N. E. 657; Stout v. McPheeters (1882), 84 Ind. 585; Groves v. Marks (1869), 32 Ind. 319.

[6] 5 THOMPSON ON REAL PROPERTY (Perm. Ed., 1940), sec. 2628; Mull v. Orme (1879), 67 Ind. 95; Horner v. Clark (1901), 27 Ind. App. 6, 60 N. E. 732.

[7] Preston v. Preston (1877), 95 U. S. 200, 24 L. Ed. 494; Gigos v. Cochran (1876), 54 Ind. 593; Peck v. Sims (1889), 120 Ind. 345, 22 N. E. 313; 66 C. J., sec. 72, p. 536. It is settled that in a complaint to quiet title there must be a sufficiently definite description to identify the premises on which the title is sought to be quieted, for the reason that otherwise there would be no definite tract to which the decree could quiet title. See College Corner and Richmond Gravel Road Co. v. Moss (1883), 92 Ind. 119; Jones v. Mount (1902), 30 Ind. App. 59, 63 N. E. 798.

[8] MCKELVEY ON EVIDENCE (4 ed., 1932), sec. 330, p. 488; Katz v. Daughtrey (1930), 198 N. C. 393, 151 S. E. 879; Bissette v. Strickland (1926), 191 N. C. 260, 131 S. E. 655; Torr v. Torr (1863), 20 Ind. 118; Baldwin v. Kerlin (1874), 46 Ind. 426; Miller v. Campbell (1875), 52 Ind. 125.

[9] 1 WILLISTON ON CONTRACTS (Rev. Ed., 1931), sec. 49.

under consideration, where compensation would be so clearly inadequate and incapable of ascertainment, it is submitted that the courts should go the whole distance in trying to find a way to meet the uncertainty and make the promise enforceable.

In the principal case the uncertainty lies in the difficulty of affixing definite boudaries to the land accompanying the house in the gift. Courts of equity have claimed jurisdiction to ascertain boundaries of land where some equity has arisen from the conduct or relation of the parties which, in justice to the parties, demands that such jurisdiction be assumed.[10] But the courts have been reluctant about exercising jurisdiction in cases of this kind.[11] The ordinary situations where they have done so are cases of estoppel resulting from wrongful confusion of boundaries or where there was an affirmative duty on one to preserve boundaries.[12] No case has been found in which the court was called upon to fix the boundary of an inaccurately described parcel of a larger tract of land. But it would seem that the facts of the principal case give rise to sufficient equities in favor of the plaintiff to justify the court in considering the case to fall within the principles as defined by the courts allowing determination of boundaries, so that it could quiet the plaintiff's title to a specific tract of land.

Viewing the principal case in this manner, it would seem that the court should be free to determine what was the intention of the promissor, evidenced by the oral promise, and could allocate a reasonable portion of the lot to accompany the gift of the house.[13] It is submitted that the decision of the principal case conforms to the demands of justice, and is not in conflict with principle and authority. C. D. S.

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10 2 TIFFANY, REAL PROPERTY (3 ed., 1939), sec. 652; Hays v. Bouchelle (1906), 147 Ala. 212, 41 So. 518; Speer v. Crawter (Eng., 1817), 2 Mer. 410, 35 Eng. Rep. 997; Wake v. Conyers (Eng., 1759), 1 Eden 331, 28 Eng. Rep. 712; King v. Bingham (1892), 23 Or. 262, 31 N. W. 601, 18 L. R. A. 361; Wolcott v. Robbins (1857), 26 Conn. 236; Stuart's Heirs v. Coalter (1826), 4 Randolph (Va.) 74, 15 Am. Dec. 731.

11 See Annotation, 15 Am. Dec. 745.

12 2 TIFFANY, REAL PROPERTY (3 ed., 1939), sec. 652; Hays v. Bouchelle (1906), 147 Ala. 212, 41 So. 518; Speer v. Crawter (Eng., 1817), 2 Mer. 410, 35 Eng. Rep. 997.

13 While actions to quiet title are of equitable origin, they exist in Indiana by virtue of statute and are triable by jury. Ind. Acts 1881 (Spec. Sess.), Ch. 38, sec. 690, p. 240; Burns Ind. Stat. Ann. (1933), sec. 3-1401. In the principal case, boundary lines were arbitrarily designated by the plaintiff, and these were used in drafting the complaint, so that relief was prayed as to a definite tract of land. The court upheld this procedure under its charge to the jury to the effect that the plaintiff had the burden of proving all facts essential to the cause of action. Thus plaintiff was required to prove equitable title to all of the land designated in the complaint. But see Monaghan v. Mount (1905), 36 Ind. App. 188, 74 N. E. 759; Joseph v. Evens (1930), 388 Ill. 11, 170 N. E. 10.